Date signed February 21, 2006

PAUL MANNES
U. S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Greenbelt

In re:

National Energy & Gas Transmission, Inc.
(f/k/a PG&E National Energy Group, Inc.),
et al.,

Debtors.

_____/

Case No. 03-30459PM*
Chapter 11

Jointly administered with Case Nos. 03-30461 through 03-30464 and 03-30686 through 03-30687

MEMORANDUM OF DECISION

Before the court is the motion of National Energy & Gas Transmission, Inc. ("NEGT") for an order disallowing additional claims asserted by Citibank N.A. ("Citibank"), acting as administrative and security agent for the Lake Road and La Paloma project lenders ("the Lenders") and the opposition thereto filed by the Steering Committee of the Lake Road and La Paloma project lenders. A hearing was held on February 8, 2006. After review of the record and consideration of the arguments of the parties, the court finds that further discovery and argument are unnecessary. The court will disallow the Lenders' additional claims.

Undisputed Facts

NEGT guaranteed debt of certain non-debtor entities related to the construction of the Lake Road and La Paloma projects. In 2002, NEGT announced that it would not fulfill its

guarantee obligations and, on July 8, 2003, filed this bankruptcy case under chapter 11. Rather than pursue collection from the various non-debtor entities, Citibank filed a proof of claim against NEGT based on two Guarantee Agreements, both dated April 6, 2001, in the amount of $623,909,778.81, plus additional unliquidated and contingent amounts. Both projects were transferred to the Lenders in March, 2004. In May, 2004, NEGT's Plan of Reorganization was confirmed. The Lenders' general unsecured claims were allowed against NEGT for $385,001,291.45 as to the La Paloma project and $238,908,487.38 as to the Lake Road project.[1] In November, 2005, Citibank, on the Lenders' behalf, made a demand to NEGT of an additional $10,616,672.14 for postpetition expenses and $90,872,297.29 for postpetition interest accruing from July 8, 2003.

Analysis

The Lenders make four arguments in support of their claim: (1) that § 502(b)(2) of the Bankruptcy Code is inapplicable because the claim for additional amounts is not a claim against NEGT but a claim for amounts accruing against the non-debtor entities whose debt was guaranteed by NEGT; (2) that there are equitable considerations for allowance of the additional amounts; (3) that this court should ignore its decision in *In re Smith*, 206 B.R. 113 (BC Md. 1997), and follow the minority view; and (4) that the Lenders are being unfairly discriminated

[1] Schedule 4.03 of the NEGT plan, entitled "Allowed Amounts of Certain General Unsecured Claims," described the Lenders' allowed claims and, in Footnote 1, provided:

> Each amount set forth herein may be increased by the amount of the aggregate amount of unpaid interest and all other amounts payable in connection with the obligations due and owing under the applicable documents subject to (i) any limitations contained in such documents and (ii) applicable law, as determined by the Bankruptcy Court.

against because NEGT has agreed to allow certain postpetition expense claims of other unsecured creditors.[2]

The Lenders' position that the additional interest is not accruing on any obligation of NEGT must fail. The claim for postpetition interest arises under the Guarantee Agreements. This is a "claim" against the debtor, NEGT.[3] Section § 502(b)(2) explicitly prohibits unsecured creditors from recovering postpetition interest on a "claim" accruing after the filing of a bankruptcy petition. To hold otherwise would be contrary to the plain and unambiguous language of § 502(b)(2) and render § 506(b) meaningless.[4] Section § 502(b)(2) prohibits the

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[2] Both the Lenders' equitable argument and the unfair discrimination argument are without merit. This court cannot seriously consider these arguments as the Lenders have been adequately represented throughout these proceedings. The arguments are unworthy of further analysis.

[3] "Claim" means--

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured[.]

11 U.S.C. § 101(5).

[4] Section 506(b) provides:

> To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

The Lenders' position violates a cardinal rule of statutory construction. "It is a classic canon of statutory construction that courts must 'give effect to every provision and word in a statute and avoid any interpretation that may render statutory terms meaningless or superfluous.'" *Discover Bank v. Vaden*, 396 F.3d 366, 369 (CA4 2005) *quoting United States v. Ryan-Webster*, 353 F.3d 353, 366 (CA4 2003).

Lenders from collecting postpetition interest against NEGT, a debtor-guarantor, and, therefore, the claim for unmatured interest is disallowed.[5]

Postpetition interest and expenses are recoverable only by secured creditors to the extent that their claims are oversecured. 11 U.S.C. § 506(b). This court agrees that the reasoning in *In re Smith* represents settled law; accordingly, the Lenders' claim for postpetition expenses is disallowed.

An appropriate order will be entered.

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[5] Although not dispositive, this court finds instructive the analysis with respect to § 502(b)(6) in the case of *In re Loewen Group Int'l, Inc.*, 274 B.R. 427, 440-41 (BC D. Del. 2002). Section 502(b)(6) caps the amount of damages allowable to a landlord resulting from the termination of a real property lease. The court in *In re Loewen Group Int'l, Inc.* noted that courts have held that if a debtor is a guarantor on a lease obligation, the cap in § 502(b)(6) applies to a lease guaranty claim notwithstanding the fact that the debtor's obligation is not an obligation to pay rent but to guarantee the payment of such rent. *Id.* at 441 *citing In re Episode USA, Inc.*, 202 B.R. 691, 695-96 (BC S.D.N.Y.1996); *In re Farley, Inc.*, 146 B.R. 739, 745 (BC N.D. Ill. 1992); *In re Revco D.S., Inc.*, 138 B.R. 528, 532 (BC N.D. Ohio 1991); *In re Rodman*, 60 B.R. 334, 334-35 (BC W.D. Okla. 1986). *See also Matter of Interco, Inc.*, 149 B.R. 934, 940-41 (BC E.D. Mo. 1993). *But see In re Danrik*, 92 B.R. 964 (BC N.D. Ga. 1988).

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End of Memorandum Decision